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No. 98-0510

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1998

RUTH J. KUHNS,
Petitioner,

v.

CORESTATES FINANCIAL CORP., successor to
MERIDIAN BANCORP, INC., successor to
THE FIRST NATIONAL BANK OF ALLENTOWN,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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I. QUESTION PRESENTED

Whether the Court should deny certiorari on the Court of Appeals' summary decision that petitioner's claims are barred by res judicata where the Court refused to grant certiorari in a prior action, *Kuhns v. Meridian Bancorp, Inc.*, 514 U.S. 1114 (1996), in which the Court of Appeals rejected the merits of petitioner's claims.

II. PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE

The petitioner is Ruth J. Kuhns, a plaintiff and purported class representative in the proceedings before the District Court and an appellant in the proceedings before the Court of Appeals. Respondent is CoreStates Financial Corp., the defendant in the proceedings before the District Court and the appellee in the proceedings before the Court of Appeals. CoreStates Financial Corp. was merged into First Union Corporation in 1998. Other than First Union Corporation, CoreStates Financial Corp. has no parent companies or non-wholly-owned subsidiaries requiring disclosure under Rule 29.6.

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V. JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1) because this proceeding involves a judgment by the Court of Appeals for the Third Circuit in respondent's favor.

VI. COUNTERSTATEMENT OF THE CASE

Although the Court previously found the so-called "merits" of Kuhns' claims unworthy of review, *Kuhns v. Meridian Bancorp, Inc.*, 514 U.S. 1114 (1996), Kuhns now asks the Court to review the dismissal, based on res judicata, of the same claims asserted in a subsequent action, *Kuhns v. CoreStates Financial Corp.*, 998 F. Supp. 573 (E.D. Pa. 1998) ("*Kuhns II*"). Far from a case deserving certiorari, this action involves only a misguided attempt by Kuhns and her counsel to extract a settlement through continued pursuit of meritless claims. Indeed, Kuhns' claims are so devoid of merit that the Court of Appeals *summarily affirmed* the dismissal of the action. *Kuhns v. CoreStates Financial Corp.*, No. 98-1303 (3d Cir. June 26, 1998). In short, this is not an action that warrants further review.

A. Background of Prior Proceedings

In 1992, Kuhns and two other former employees of Meridian Bancorp's predecessor, the First National Bank of Allentown ("First National"), filed an action against Meridian captioned *Kuhns, et al. v. Meridian Bancorp, Inc.*, No. 92-CV-4065 (E.D. Pa.) ("*Kuhns I*"). *Kuhns I* was filed on behalf of a purported class of current and former employees of First National who were participants in a profit sharing plan (the "Profit Sharing Plan") that was converted into a defined benefit pension plan (the "Pension Plan") in 1971 by First National.

In *Kuhns I*, Kuhns alleged that First National (and later Meridian) violated state common law and the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461 ("ERISA"), by

"embezzling" the account balances from the Profit Sharing Plan to fund some of the benefits in the Pension Plan and by creating and maintaining an allegedly improper benefit formula. With good reason, the Third Circuit flatly rejected this allegation, finding it "patently false" and "symptomatic of the failings of [Kuhns'] lawsuit." [Appendix at 6a]. In fact, when the Profit Sharing Plan was replaced with the Pension Plan (to provide better benefits), First National ensured that the participants' accrued benefits were not reduced through the Pension Plan's benefit formula. [Appendix at 4a n.3].

Ruling on Meridian's summary judgment motion, the District Court dismissed all of Kuhns' claims on statute of limitations and laches grounds, except for her claim that the Pension Plan's benefit formula provided an inadequate interest credit on the accrued benefits from the Profit Sharing Plan. *Kuhns v. Meridian Bancorp, Inc.*, No. 92-4065 (E.D. Pa. Feb. 8, 1993) (1993 U.S. Dist. LEXIS 5121). The District Court held that this allegation involved a possible "continuing violation" of ERISA that was not fully time-barred. Following a bench trial, the District Court adjusted the interest rate to 7.4% and recalculated Kuhns' Pension Plan benefits.

B. Meridian's Successful Cross-Appeal

The parties then filed timely cross-appeals. *Kuhns, et al. v. Meridian Bancorp, Inc.*, Nos. 94-1839 and 94-1869, slip op. (3d Cir. Sept. 8, 1995). The Court of Appeals unanimously ruled in Meridian's favor and ordered the case "remanded to the district court with

directions to enter judgment for the defendants on all counts." [Appendix at 12a].[1]

This Court then denied Kuhns' petition for writ of certiorari, and final judgment was entered on all claims in favor of Meridian on March 15, 1996 in accordance with the Court of Appeals' decision.

Unfortunately, however, Kuhns' efforts to pursue her meritless claims did not end with the denial of her petition for writ of certiorari. As the District Court in *Kuhns II* described:

> After having moved for and been denied reconsideration by the Third Circuit, plaintiffs next moved to nevertheless compel the trustees to pay them benefits and to pay attorneys' fees as provided in the now-reversed order of the district court. They also sought leave to file a "supplemental complaint." These motions were naturally both denied. Plaintiffs moved the district court to reconsider its decision denying these motions, which was also denied and they thereafter took a second appeal to the Third Circuit. In addition to summarily affirming the district court's denial of the motions to compel payments and to amend the complaint, on August 14, 1997 the Third Circuit sanctioned plaintiffs' attorney for causing defendant excessive costs and expenses pursuant to 28 U.S.C. §1927.

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[1] The Third Circuit opinion is reproduced in the appendix.

Kuhns II, 998 F. Supp. at 576.

C. The Present Action

While the Third Circuit's sanctions order apparently ended the litigation in *Kuhns I*, it did not dissuade Kuhns and her counsel from filing the present action, *Kuhns II*, which is yet another attempt to re-litigate issues that have already been explicitly rejected. For example:

1. Kuhns repeats her "continuing violation" argument, Complaint at 16, ¶22(b),[2] which was rejected by the Court of Appeals in its 1995 opinion (which this Court chose not to review). [Appendix at 7a-9a].

2. Kuhns again alleges "embezzlement" of plan assets, an allegation rejected in *Kuhns I* as "patently false." [Appendix at 6a].

3. Kuhns again claims ownership of the Profit Sharing Plan assets, another claim rejected in *Kuhns I*, 1993 U.S. Dist. LEXIS 5121 at *55-58. [Appendix at 6a].

4. Kuhns renews her claim for payment of both a profit sharing benefit and a defined benefit. Complaint at 20, ¶26(d). This claim too was raised (and rejected) in *Kuhns I*. [Appendix at 3a].

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[2] A copy of the complaint is contained in the appendix to Kuhns' petition.

In short, Kuhns challenges the same transaction she challenged before, asserts the same legal theories, and seeks the same relief she sought previously. There is, therefore, nothing new in this case since 1996 (when the Court denied Kuhns' previous petition for writ of certiorari) other than the proper dismissal of Kuhns' re-asserted claims based on res judicata.

VII. REASONS FOR DENYING THE WRIT

This case presents no unsettled or controversial legal issues and the resolution of Kuhns' claims will have no impact on the public at large. Instead, as reflected by the Third Circuit's summary affirmance, the present petition involves only the dismissal, based on well-settled principles of res judicata, of claims this Court found unworthy of review in 1996.

A. Res Judicata Bars Plaintiff's Claims.

The doctrine of res judicata applies when there is "(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action." *Lubrizol Corp. v. Exxon Corp.*, 929 F.2d 960, 963 (3d Cir. 1991) (citation omitted).

Courts have rejected arguments (like Kuhns' argument here) that res judicata does not apply when a plaintiff suffers ongoing harm from conduct challenged unsuccessfully in a prior proceeding. One example is *Huck v. Dawson*, 106 F.3d 45 (3d Cir.), *cert. denied*, 117 S. Ct. 2458 (1997), where a prior action was filed by an air transport company ("Sea Air") against the owner of seaplane ramps to obtain access to the ramps. After Sea Air's claim was dismissed on summary judgment, a Sea Air shareholder sued derivatively on the company's behalf, repeating many of the same claims asserted in the prior action.

The shareholder in *Huck* argued that res judicata did not apply because, after the judgment in the prior action, the ramp owner "continued to deny Sea Air access to the sea ramps." *Id.* at 49. The *Huck* Court

flatly rejected this argument: "[T]he conduct of which Huck complains, *i.e.*, the denial of access to the sea ramps, is precisely the same conduct challenged in the earlier suit. . . . [I]t is difficult to understand how Huck can conclude that [the defendant], by acting upon authority of and in accordance with the judgment of the district court [in the prior action], created a new cause of action that was not barred by res judicata." *Id.* The Court also rejected the argument that a new cause of action (not barred by res judicata) arose because of new harm suffered from conduct previously found lawful. *Id.* at 50.

Here, the District Court and the Court of Appeals properly followed *Huck*, which foreclosed Kuhns' attempt to avoid res judicata. In fact, each of the requirements of res judicata is met just as easily here as they were in *Huck*.

1. Final judgment on the merits.

Both the summary judgment and the final judgment entered by the District Court in *Kuhns I* dismissing Kuhns' claims based on the statute of limitations and laches are "final judgments on the merits" with res judicata effect. *See, e.g., Hubicki v. ACF Indus., Inc.*, 484 F.2d 519, 522 (3d Cir. 1973) (disposition by summary judgment "went to the merits"), *followed in Rosetti v. Shalala*, 12 F.3d 1216, 1230-31 n.30 (3d Cir. 1993); *Hartley v. Foundation Equipment Corp.*, 1990 U.S. Dist. LEXIS 9841, *4 (E.D. Pa.) (dismissal of action under statute of limitations precludes a second action on the same claim). *See also Cannon v. Loyola Univ. of Chicago*, 784 F.2d 777, 781 (7th Cir. 1986) (dismissal based on laches is a judgment on the

merits); 18 Charles A. Wright et al., *Federal Practice and Procedure* § 4427 (1981).

2. Same parties or their privies.

It is undisputed that CoreStates is a party in privity with Meridian. Complaint at 4, ¶¶3-4. Successors in interest such as CoreStates are entitled to the benefits of res judicata based on prior actions against their predecessors in interest. *E.g.*, *State Farm Fire & Cas. Co. v. Fullerton*, 118 F.3d 374, 384 (5th Cir. 1997); *Guerrero v. Katzen*, 774 F.2d 506, 509 (D.C. Cir. 1985); *Restatement (Second) of Judgments* § 43 (1982).

3. Identical causes of action.

The requirement of identity of causes of action is viewed broadly, and requires only "an essential similarity of the underlying events giving rise to the various legal claims." *United States v. Athlone Indus., Inc.*, 746 F.2d 977, 984 (3d Cir. 1984) (citation omitted). Four factors decide this issue: (1) identical issues complained of and relief requested; (2) identical theory of recovery; (3) identical witnesses and documents; and (4) same material facts. Each of these factors are satisfied here.

First, Kuhns complains of the same acts, and seeks the same relief as she did in *Kuhns I*. The only difference is that she is now suing CoreStates rather than Meridian.

Again, Kuhns raises the same claim here she raised before: that CoreStates' current administration of the Pension Plan deprives Kuhns of her alleged property interest in the Plan's assets. *Id.* The Court of Appeals, however, rejected this claim when it held in *Kuhns I* that Meridian's alleged liability could not be based on its administration of the Pension Plan, but rather was based on the actions of First National in 1971. [Appendix at 9a (plaintiffs' cause of action accrued in 1971)]. Moreover, Kuhns seeks precisely the same relief (payment of both the alleged profit sharing benefit and the Pension Plan benefit) here that she sought in *Kuhns I*. Complaint at 17, ¶24.

Second, Kuhns asserts the same theories of recovery (breach of contract and breach of fiduciary duty) here as she did *Kuhns I*. Complaint at 16, ¶22(b). She even asserts the same "continuing violation" theory she used unsuccessfully in *Kuhns I*. Complaint at 16, ¶ 22(b).

Third, this case involves identical witnesses and documents because this action, like *Kuhns I*, challenges the lawfulness of First National's conduct in 1971. Significantly, Kuhns' state law claims were previously dismissed on laches grounds precisely because much of the evidence crucial to the defense was no longer available as a result of Kuhns' extraordinary delay in filing her claims. *Kuhns I*, 1993 U.S. Dist. LEXIS 5121 at * 19-28.

Finally, this case involves the same material facts as *Kuhns I* because all of the relevant facts were complete as of 1971 (*i.e.*, the formal replacement of the Profit Sharing Plan by the Pension Plan). [Appendix at 9a]. CoreStates' acquisition of Meridian does not alter this conclusion any more than Meridian's acquisition of First National did. *See supra* at 9 (successor in interest entitled to res judicata benefits of predecessor).

In sum, res judicata bars Kuhns' claims because (1) there was a final judgment in *Kuhns I*, (2) the parties here are identical or privy to those of *Kuhns I*, and (3) the two causes of action are identical. *Lubrizol*, 929 F.2d at 973. Kuhns therefore failed to state a claim upon which relief could be granted, her complaint was properly dismissed and her petition for writ of certiorari should be denied.[3]

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[3] The same conclusion is compelled under the doctrine of collateral estoppel, another issue raised in CoreStates' motion to dismiss. *Cf. Raytech Corp. v. White*, 54 F.3d 187 (3d Cir. 1995). Although the District Court did not reach the issue of collateral estoppel, the doctrine applies under the facts of this case and is another reason why Kuhns' petition for writ of certiorari should be denied. *Cf. Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 63 (1986) (affirming judgment for reasons different than those relied upon by lower courts).

B. There Are No National Issues Requiring Review

Although all the issues raised here have been addressed in *Kuhns I*, Kuhns attempts to obtain review by this Court by arguing that there are national issues at stake because of the so-called misuse of plan assets in bank mergers as exemplified by CoreStates' alleged use of the Pension Plan assets to avoid the consequences of terminating the Pension Plan following the Meridian merger. [Petition at 2]. She further claims that despite the ruling in *Kuhns I* that her claims are time-barred, she is entitled to pursue this claim under *Chase Securities Corp. v. Donaldson*, 325 U.S. 304 (1945), and *Campbell v. Holt*, 115 U.S. 620 (1885). Kuhns is wrong in both respects.

First, ERISA allows employers to merge or amend pension plans provided there is no reduction in accrued benefits. 29 U.S.C. §§ 1054(g) and 1058. In making such decisions, employers are not constrained by ERISA's fiduciary provisions. *Lockhead Corp. v. Spink*, 517 U.S. 882 (1996). CoreStates therefore had no duty to terminate any plan as a result of the Meridian merger. Moreover, because there was no reduction of Kuhns' accrued benefits, there is no claim (much less a "national" issue).

Second, Kuhns' reliance on *Chase Securities* and *Campbell* is misplaced. These cases stand for the proposition that the Fourteenth Amendment is not violated when a legislature enlarges a statute of limitations even though the legislation may revive certain time-barred claims. *Chase Securities*, 325 U.S. at 314-16; *Campbell*, 115 U.S. at 628-29. Here, however, there is no legislative action (as there was in *Chase*

Securities and *Campbell*) to revive Kuhns' claims, and any such legislation would, in any event, violate the Separation of Powers under Article III of the Constitution because a final judgment has been entered against Kuhns. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995) (legislation that would reinstate claims in which final judgments had been entered under the statute of limitations is unconstitutional). Kuhns' claims are therefore barred by the final judgment entered in *Kuhns I* and the Court should reject her petition.

VIII. CONCLUSION

This case involves no conflict among the Circuits, no violation of federal law and raises no important federal issues requiring review by this Court. Instead, this case involves the application of the settled legal principles of res judicata to uphold the integrity of the final judgment entered in *Kuhns I*. Petitioner's disagreement with the application of settled legal principles to the facts of this case does not merit review by this Court. For these reasons, respondent respectfully requests the Court to deny petitioner's petition for writ of certiorari.

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